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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/673,625 | 09/29/2003 | Benjamin R. Neier | P06057US00 | 2544 |
| 22885 | 7590 | 07/24/2006 | EXAMINER | |
| MCKEE, VOORHEES & SEASE, P.L.C. 801 GRAND AVENUE SUITE 3200 DES MOINES, IA 50309-2721 | | | GANEY, STEVEN J | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3752 | |

DATE MAILED: 07/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/673,625

Applicant(s)

NEIER ET AL.

Examiner

Steven J. Ganey

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>9/29/03 & 9/13/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: On page 6, line 4, the phrase "belt 20 spans" should be changed to --belt 30 spans--. On page 6, line 16, the word --barrier-- should be inserted after the word "sliding".

Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, a first roller and a second roller and continuous conveyor belt must be shown or the features canceled from claims 6, 7, 12 and 13. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

Art Unit: 3752

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 6-8 and 12-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The specification is silent to the embodiment wherein a first roller and a second roller are provided, the conveyor belt being continuous and the conveyor belt around a first roller and a second roller. As disclosed and shown in the drawings there is only one roller 52 provided and the conveyor belt 30 is only trained around the roller 52. A sprocket 50 is provided for driving the chain, however, there is no training of the conveyor belt around the sprocket disclosed. The chain 32 is connected to the front of the conveyor belt at connecting bar 34 and the rear of the conveyor belt is connected to the sliding barrier at belt connection 46. It is not clearly described how a continuous conveyor belt would work with the disclosed invention, and it does not appear

that such an arrangement would function properly with the current disclosed instant invention. How would the sliding barrier be used in such an arrangement and appears now that the chain would be in contact with the material in such a configuration, which is against the main inventive principle of the instant invention?

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are the sliding barrier 38. The invention will only work properly if the sliding barrier is provided such that the material is pushed to the rear end of the spreader box and thereby discharge all the material within the spreader box, see Specification, page 6, lines 1-5.

Claims 1, 9 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are between the sliding barrier and the conveyor belt and between the chain and the sliding barrier. The conveyor belt is connected to the sliding barrier at belt connection 46 and the chain is connected to the sliding barrier at chain connector 48. These structural cooperative relationships are vital in the operation and function of the

Art Unit: 3752

instant invention and without such elements and structural cooperative relationships the invention would not work properly.

In claim 1, lines 6 and line 16, "the rear end of the bottom wall" lack antecedent basis. Language such as the --the bottom wall having front and rear ends-- should be provided in the claim, similar to language used in claim 15.

In claim 1, line 12 and 18, "the rear wall of the spreader box" and "the rear wall" lack antecedent basis. Language such as the --the spreader box having a rear wall-- should be provided in the claim.

Claim 6 is indefinite since as disclosed only one roller 52 is provided and one sprocket 50 and the conveyor belt is not continuous but is instead fixed between the sliding barrier and the chain. Language such as --comprising a roller mounted for rotation about a roller axis, the conveyor belt being trained around the roller-- should be used instead.

Claim 7 is indefinite since as disclosed only one roller 52 is provided and one sprocket 50. Language such as --comprises a sprocket connected to the roller and a chain engaging the sprocket for causing rotation of the roller-- should be used instead in lines 2 and 3.

Claim 12 is indefinite since as disclosed only one roller 52 is provided and one sprocket 50. Language such as --comprising training the conveyor belt around a roller mounted to the box for rotation about a horizontal axis-- should be used instead.

In claim 13, lines 2 and 3, "the rear wall" lacks antecedent basis. Language such as the --the spreader box having rear wall-- should be provided in claim 9.

Claim 13 is indefinite since as disclosed only one roller 52 is provided to cause movement of the conveyor belt. Language such as --comprising rotating the roller to cause

Art Unit: 3752

movement of the conveyor belt toward the discharge opening of the rear wall-- should be used instead.

Claim 14, "the at least one roller" lacks antecedent basis and is indefinite since this indicates one or more rollers however, as disclosed only one roller 52 is provided. Language such as --comprising using a chain trained around a sprocket connected to the roller to rotate the roller-- should be used instead.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 and 6-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Groeneveld et al.

Groeneveld et al discloses a material spreader comprising all the featured elements of the instant invention, note spreader box 22 with a bottom wall and having a conveyor belt 24 superimposed over the bottom wall; a discharge opening at the rear of the box/bottom wall, see Figure 2; drive mechanism 28 comprising a chain and sprocket assembly 29 with a roller 26, the chain and sprocket assembly are located outside the storage chamber; and beater assembly 25/31/32. Note that it is inherent that another roller would be provided in the front of the spreader box such that the conveyor belt would be able to rotate towards the rear of the spreader box as disclosed.

The apparatus of Groeneveld et al is capable of performing the method steps as claimed.

9. Claims 1, 2, 6, 7, 9, 10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glick et al.

Glick et al discloses a material spreader comprising all the featured elements of the instant invention, note spreader box 15; a bottom wall 16 with a conveyor belt 20 superimposed over the bottom wall 16; a discharge opening/end 19 at the rear of the box/bottom wall; drive mechanism 25 comprising a chain 21 and sprocket/roller 23 assembly and a roller 22; and beater assembly 30.

The apparatus of Glick et al is capable of performing the method steps as claimed.

10. Claims 1, 2, 5-7, 9, 10 and 12-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Wolfe.

Wolfe discloses a material spreader comprising all the featured elements of the instant invention, note spreader box B/10; a bottom wall C with a conveyor belt E superimposed over the bottom wall C; a discharge opening/end 15 at the rear of the box/bottom wall; drive mechanism comprising a chain D and sprocket/roller F assembly and a roller F at the front. See col. 2, lines 29-36; and beater assembly comprising beater bars 52/56 for rotation on horizontal axes.

The apparatus of Wolfe is capable of performing the method steps as claimed.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3752

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groeneveld et al in view of Meyer et al.

Groeneveld et al discloses all the featured elements of the instant invention except for the beater assembly mounted for rotation about a plurality of upstanding axes. Meyer et al shows a material spreader with a plurality of beater bars 69/70 mounted for rotation about a plurality of horizontal axes 67/68, see figures 2, 9 and 10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the beater assembly of Groeneveld et al with a plurality of beater bars mounted for rotation about a plurality of upstanding axes since Meyer et al teaches the equivalence of both a plurality of beaters bars on vertical axes and a plurality of beater bars on horizontal axis and such an arrangement whether in a vertical orientation or horizontal orientation would perform equally as well in the apparatus of Groeneveld et al .

13. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Groeneveld et al in view of Johnson et al '624.

Groeneveld et al discloses all the featured elements of the instant invention except for the beater assembly mounted for rotation about a plurality of horizontal axes. Johnson et al '624 shows a material spreader with a plurality of beater bars 9/10 mounted for rotation about a plurality of horizontal axes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the beater assembly of Groeneveld et al with a plurality of beater bars mounted for rotation about a plurality of horizontal axes, as taught by

Johnson et al '624, since such an arrangement would facilitate the engaging and spreading of the material from the rear of the spreader box and would perform equally as well in the apparatus of Groeneveld et al.

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfe.

Wolfe discloses all the featured elements of the instant invention except for the beater assembly mounted for rotation about a plurality of upstanding axes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the beater assembly of Wolfe with the beater bars 52/56 mounted for rotation about a plurality of upstanding axes since such an arrangement is an obvious variant of the rotation about a plurality of horizontal axes and such an arrangement would perform equally as well in the apparatus of Wolfe.

Allowable Subject Matter

15. Claim 15 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson et al '403 shows a material spreader with beater assemblies on horizontal axes.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (571) 272-4899.

Art Unit: 3752

The examiner can normally be reached on Monday, Tuesday, Wednesday, and Thursday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (571) 272-4919. The fax phone number for this Group is (571) 273-8300.

sjg

2/3/06



STEVEN J. GANEY
PRIMARY EXAMINER

2/3/06